

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION**

TARA HARDIN, <i>et al.</i> ,	:	Case No. 1:22-cv-542
	:	
Plaintiffs,	:	Judge Timothy S. Black
	:	
vs.	:	
	:	
HEARTLAND DENTAL, LLC,	:	
	:	
Defendant.	:	

**ORDER FOLLOWING DISCOVERY CONFERENCE**

This civil case came before the Court for an informal discovery conference on October 30, 2023 by telephone. Karen Gaunt, Bobby Hampton, and Louis Tompros appeared for Plaintiffs. Dave Shouvin, Evan Gourvitz, and Jolene Wang appeared for Defendant.

Prior to the conference, Plaintiffs identified nine discovery requests, grouped into three different categories, that Defendant had refused to answer or to which Defendant purportedly provided deficient responses. Plaintiffs and Defendant also each submitted statements regarding their positions on the discovery requests to the Court.<sup>1</sup>

After review of the discovery requests and the parties' positions, and with the benefit of the parties' arguments during the informal discovery conference, the Court provided its resolutions regarding the discovery disputes, *to wit*:

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<sup>1</sup> Statements on file with the Court.

1. In a verified pleading, Defendant **SHALL** identify all dental practices that viewed Dr. Hardin's photograph on the website and ultimately were acquired by or became affiliated with Defendant.

2. Defendant **SHALL** produce documents showing Defendant's revenues, profits, and losses, including but not limited to all income statements, balance sheets, and cashflow statements, that are related to all dental practices that viewed Dr. Hardin's photograph on the website and ultimately were acquired by or became affiliated with Defendant. Defendant **SHALL** produce these documents through the present.<sup>2</sup>

3. Defendant **SHALL** produce all documents containing Dr. Hardin's photograph that were provided to actual or prospective investors or business partners. To the extent Defendant claims that Dr. Hardin's photograph was not used in any materials other than the website, Defendant **SHALL** provide a verified statement affirming as such.

4. Defendant **SHALL** produce a verified list of all third parties that viewed the website (<https://heartland.com/affiliations/thankyou?submissionGuid=>) while the website used Dr. Hardin's photograph.

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<sup>2</sup> During the conference, Plaintiffs argued that the Court should order additional discovery related to Defendant's financials and advertising materials because such discovery was necessary to prove their hypothetical licensing fee theory of damages. The Court takes this argument under advisement, but notes that some courts have found that hypothetical licensing fee damages must be established with objective, non-speculative evidence. *E.g., Mango v. BuzzFeed, Inc.*, 356 F. Supp. 3d 368, 375 (S.D.N.Y. 2019), *aff'd*, 970 F.3d 167 (2d Cir. 2020) ("the Court finds that the fees that [plaintiff] personally negotiated in prior licenses are the best approximations for the licensing fee [plaintiff] would have received for the Photograph"); *Marshall & Swift/Boeckh, LLC v. URS Corp.*, No. CV0804375GAFSSX, 2012 WL 12964282, at \*3 (C.D. Cal. Feb. 22, 2012) (warning of potential abuse when damages are based on hypothetical licensing fees and insisting that award of hypothetical licensing fees must "be supported by objective evidence of the market value of the misappropriated materials").

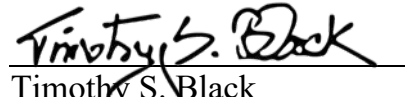
5. Defendant **SHALL** respond to Request for Production No. 38, but Defendant may limit its search in time to five years prior to the date Defendant first used the photograph to the date Defendant last used the photograph.

6. Defendant **SHALL** produce any agreements or licenses to use other person's copyrights or trademarks from five years prior to the date that Defendant first used the photograph to the date Defendant stopped using the photograph.

7. Defendant **SHALL** take all reasonable steps to produce this discovery, on a rolling basis, prior to the settlement conference on November 15, 2023.

**IT IS SO ORDERED.**

Date: 10/31/2023

  
Timothy S. Black  
United States District Judge